

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 12 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

DONATO ESTRADA,

Petitioner - Appellant,

v.

CAL A. TERHUNE, Director of CDC; et
al.,

Respondents - Appellees.

No. 04-16918

D.C. No. CV-02-00440-WBS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, Chief District Judge, Presiding

Submitted December 5, 2005**

Before: GOODWIN, W. FLETCHER and FISHER, Circuit Judges.

California state prisoner Donato Estrada appeals the district court's order denying his 28 U.S.C. § 2254 petition challenging the California Board of Prison

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Terms' (the "Board") decision finding him unsuitable for parole. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

As a preliminary matter, we reject the government's contention that there is no constitutionally protected liberty interest in early release on parole. *See Biggs v. Terhune*, 334 F.3d 910, 914 (9th Cir. 2003).

Estrada contends that the 2000 decision by the Board finding him unsuitable for parole was based on insufficient evidence and thus violated his right to due process. In the parole context, due process requirements are satisfied if some evidence supports the Board's decision and that evidence bears some indicia of reliability. *See id.* at 915. Because at least two of the Board's bases for finding Estrada unsuitable for parole satisfied these requirements, we conclude that the state court's decision was neither contrary to, nor an unreasonable application of, clearly established federal law. *See id.*

Estrada's motion to expand the Certificate of Appealability is denied.

AFFIRMED.